

This set of minutes was approved at the TC meeting on December 3, 2007

**DURHAM TOWN COUNCIL
MONDAY, NOVEMBER 5, 2007
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT:

Chair Neil Niman; Councilor Mark Morong; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Diana Carroll; Councilor Julian Smith; Councilor Henry Smith; Councilor Cathy Leach; Councilor Peter Stanhope

MEMBERS ABSENT:

OTHERS PRESENT:

Town Administrator Todd Selig; Business Manager Gail Jablonski; Public Works Director Mike Lynch; Town Engineer David Cedarholm; Fire Chief Peter O'Leary

I. Call to Order

Chair Niman called the meeting to order at 7:03 PM.

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. Councilor Leach SECONDED the motion.

Councilor Stanhope MOVED to amend the Agenda, for the meeting to end no later than 10:30 pm.

Councilor Needell said he didn't disagree with the amendment, but would agree to extend the meeting if necessary.

The motion to amend PASSED 8-1, with Councilor Julian Smith voting against it.

The original motion, as amended, PASSED unanimously 9-0.

III. Special Announcements

A. Employee service recognition (20 years) – Gail Jablonski

Chair Niman provided a certificate of appreciation to Ms. Jablonski on behalf of the Town of Durham for her years of service.

B. Introduction and Swearing-in of new Firefighter, Keith LeClair

Chief O'Leary said Mr. LeClair was a career firefighter from the Hillsboro Fire

Department. He said he was trained as a certified fire fighter and paramedic, which saved the Town time and money. He said Mr. LeClair had chosen Durham as much as Durham had chosen him, and said he was sure he would bring the Town many years of service.

- C. Chair Niman introduced Mark Huddleston, the new President of UNH. President Huddleston said he was delighted to be there, and said the Council would be seeing a lot more of him in the years to come.

Councilor Carroll noted that the previous Thursday morning, President Huddleston had hosted a community breakfast of about 100 people, and said it had been a wonderful time that brought members of the UNH and Durham communities together. She said some good information was presented, including a presentation on the Mill Plaza redevelopment concept. She said Planning and Community Development Director Jim Campbell had been one of the presenters, and did a great job.

President Huddleston said more such events would be coming up in the future.

IV. Approval of Minutes

October 1, 2007

Page 5, 2nd sentence in second full paragraph, should read “She said the Commission didn’t have other...”

Page 14, 2nd paragraph from bottom, should read “He noted that he hadn’t taken a public stand..”

Page 19, 1st paragraph, should read “He said the Council had to be good stewards..”

Page 23, 1st full paragraph, should read “He said such a board would meet in public sessions..”

Next paragraph, should read “..and his opinion was that this was not required, ...”

Page 27, 3rd paragraph, should read “...water coming over the dam at one time.”

Councilor Needell MOVED to approve the October 1, 2007 Minutes as amended. Councilor Morong SECONDED the motion, and it PASSED unanimously 7-0-2, with Councilor Van Asselt and Councilor Stanhope abstaining because of their absence from that meeting.

V. Councilor and Town Administrator Roundtable

Councilor Morong said he had attended the recent DCAT meeting, and said the issue of Candidates Night had come up, regarding how questions should be gathered and how the event should be moderated in order to ensure that there was a fair, even discussion.

He said another issue discussed at the meeting was whether DCAT should schedule a political season, so that from January to elections in March, groups wanting to sponsor candidates could do this on DCAT, if they paid a fee for the use of DCAT facilities. Councilor Morong said the members of the committee wanted to know what the Council thought about this idea.

Chair Niman said this would put on a future agenda for discussion.

Councilor Julian Smith said the Mill Plaza Committee had held a workshop the previous weekend where the second set of designs had been presented. He said the event was well-attended, and said a third set of designs would be presented at another workshop in about a month. He noted that there would be a meeting of the Committee on Wednesday at 4:30 pm., and said members of the public were invited to attend.

Councilor Carroll updated the Council on the October 24th Planning Board meeting.

- There was a public hearing on the Berton application, involving a mixed-use development of a former fraternity house in the Professional Office district.
- There was a Conditional Use permit application to expand a nonconforming use that had been operating as a boarding house.
- There was a design review discussion concerning the Henderson property at One Madbury Road, where Mr. Henderson proposed a mixed use development with office and retail on the first floor, and apartments on the second and third floors.
- There was a conceptual review discussion regarding a proposed 41-unit Town House unit development at 278 Main St, which was intended to be workforce housing for staff and faculty at UNH.

Councilor Carroll said the next Planning Board meeting was scheduled for November 14th.

Councilor Stanhope said the next Integrated Waste Management Advisory Committee meeting would be held on November 13th.

Administrator Selig provided the following updates to the Council:

- He said Town election officials were planning the election cycle for the next year, given the primary. He said there had been discussion with the School Board as to whether the High School would be closed on Election day, with the School Board wanting to have school on that day, and the Town hoping it would be cancelled again this year.
- He congratulated Town Police and Fire Department staff, as well as the Public Works Department and the UNH Police Department for ensuring that the behavior of individuals downtown after the Red Sox won the World Series was appropriate. He said the Town finally had a strategy that was effective. He noted the importance of providing a place where people could gather as part of such a strategy.
- He said there was a 3.5% increase in the 2007 tax rate, over the 2006 tax rate of \$27.28, and said if approved that evening by the Council, tax bills would be sent out shortly.
- Regarding water and sewer bills, Administrator Selig said blue die tabs were being included with the bills so residents could determine if their toilets were leaking water. He said this was part of a larger effort to conserve water in Durham.

- He said contract negotiations had been included with the last four of the Town's bargaining units. He provided details on the proposed changes, and strongly recommended that the contracts be ratified. He thanked members of the management teams for working over time in these negotiations to come to agreement.

Councilor Van Asselt said he had recently spoken with some residents about surveillance cameras in downtown Durham. He said he hadn't known anything about this, but said there were a number of issues to consider if the Town was going to follow this practice. He said if it was, the Council and the public needed to know that.

Administrator Selig said the surveillance cameras were used for the Red Sox-related events, and were temporary. He said he had noted this in his Friday Update.

VI. Public Comments (NLT 7:30 PM)

Richard Kelley, Stagecoach Road, said he would like to speak on the Spruce Hole agenda item. He first asked if the \$64,000 cost for the proposed study would be split between the Town and the University, and was told yes. He also said it was his understanding that this would be an engineering study that would place a cost on the development of the aquifer. He said if this was the case, he supported it, because it was important to know the cost before spending money on the development of the aquifer. He also said the study would point whether there would be any adverse impacts on the Spruce Hole bog from the aquifer development.

Administrator Selig said Mr. Kelley's characterization of the purpose of the study was correct.

Mr. Kelley said he would reserve his support for the actual development of the aquifer until the costs were known. He said there might be cheaper water at the Town's disposal, which wouldn't cost the Town \$3 million.

William Hall, Durham, said he believed the Lamprey River was a cheaper water source than Spruce Hole. He said he was not happy with the idea of developing Spruce Hole, stating that there wouldn't be enough water from it for the University and that the Lamprey would have to be used anyway, in part to recharge the aquifer. He said if the Town was going to be using this water anyway, why not pump it to the treatment plant and use it.

Mr. Hall said the Town had other needs that the money for the Spruce Hole aquifer could be spent on. He provided details on infrastructure issues that needed to be addressed. He said it was ridiculous that the Town spent a half million dollars on hard pipe and couldn't use it because of the 401 water quality restriction on the Lamprey. He said the Lamprey River already met the water quality requirements, providing details on this, and also said the Town shouldn't be using the Oyster River. He said the Council wasn't doing a good job on this issue.

Robin Mower, Faculty Road, noted that she had been asked to consider submitting her name to become a member of the Economic Development Committee, but declined for a variety of reasons. She said she would like to offer some comments in a nonofficial capacity. She said she had been attending EDC meetings, but was bring her comments to the Town Council because this seemed to be a more appropriate public forum, but also because of the infrequent schedule of the EDC, and the commonality of interests between some members of the Town Council, the EDC and the Mill Plaza Committee.

She said a final reason she was addressing the Council on this issue was that the EDC was beginning a new chapter as a committee with standing status. She said her key point was that there was no better time than now for the EDC both to broaden its mission and to take more vigorous steps to realizing that vision.

Ms. Mower noted that the EDC's 2007 Action Plan was reviewed at its October 4th meeting, and said she was glad to hear that more active involvement regarding the potential Mill Plaza redevelopment had made the list. She said she had been disappointed to see such a low attendance by members of the EDC to date at the public forums and regular meetings concerning Mill Plaza. She said she hoped that the EDC's interest and commitment to involvement with a project that potentially had such a large impact on the Town would increase in the future.

She noted that the Mill Plaza Study Committee had held its third public forum the previous day, and at the meeting, Dick Gsottschneider of RKG Associates gave a presentation on his economic analysis of the initial conceptual designs, a limited economic analysis of the site and an opinion of key financial considerations. She said RKG Associates strongly believed that there was an opportunity for increased office space in the Durham community and perhaps an opportunity for increased tax revenue based on square foot pricing more comparable to Hanover or Portsmouth. She said that among his arguments on the potential market was the aging of the Durham population, which could create the demand for medical and professional services and financial advisors.

Ms. Mower said with this potential, there could be no better time than now for the EDC to establish the groundwork, to network, and to actively seek out potential new business for downtown Durham, and she said this might tip the balance toward a successful redevelopment of the Plaza. She said she hoped that members of the EDC would look beyond their ties with local developers who sought to build large-scale developments on the outskirts of Town, and beyond the low-hanging fruit of student housing.

Ms. Mower said the Pettee Brook area was another area of downtown Durham that continued to be overlooked, and said she would like to see the EDC develop a plan for that area. She provided details on this, and said she hoped that the EDC might brainstorm ways to induce UNH to swap property or to sell it at a price that Durham couldn't refuse. She also said she wondered if the EDC might perhaps play a greater role in providing support for the Town Administrator's negotiations with UNH regarding other matters of common financial interest.

She said that any look at the future of Pettee Brook should include a consideration of the impact that the current one-way traffic pattern had on the vitality and potential growth of the downtown area. She said it was too easy to dismiss this topic as one that had been looked at in the past. She said the partnership of the NH chapter of the AIA with the Mill Plaza Study Committee had made it clear that Durham had the opportunity to take a new look at what the Town wanted for its future. She said one could argue that closing Pettee Brook to traffic, and rerouting it down Garrison Ave., for example, would open up a world of possibilities for downtown growth and vitality.

She said the Town was fortunate to have at least one Durham resident who was a professional planner for a larger, nearby city. She said that rather than rely on dated outside consultant reports, the EDC might consider inviting those with a vested interest and experience as residents of Durham as well as relevant expertise to provide input.

Ms. Mower said she was glad to see that the minutes of the October meeting of the EDC were online, and said she imagined that in the future they would be subject to formal approval, as with other boards or committees with standing status. She said she also hoped that a minute-taker would be formally appointed if the citizen who had volunteered to take minutes, at least temporarily, would not be continuing.

She said that one topic discussed at length at the EDC meeting was raised by Council representative Karl Van Asselt, and addressed a concern recently voiced by at least two citizens. She said the concern was whether a balance could be found between economic development and conservation interests. She said that although the EDC had put a revision of the Tax Stabilization chapter of the Master Plan 2000 on its 2007 Action Plan, she would urge it not to proceed too far without a concomitant rewriting of the chapter that covered environmental and conservation issues.

Ms. Mower said this balance was particularly important in light of current knowledge about global warming and the Town's commitment to reducing carbon emissions, a goal which the conservation of existing forest land made a significant contribution to. She suggested that the Council should ask the EDC and the Conservation Commission to provide a standing representative to each others' meetings.

David Emanuel, representing the Durham Professional Fire Fighters' Association, said Durham's first motorized fire truck had been restored, after a significant amount of work, and said the Fire Department would be holding an event from 3:00 –5:00 pm on Saturday, November 10th, to celebrate the starting of the truck. He said the Department would provide ice cream for residents at this event.

VII. Unanimous Consent Agenda (Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)

- A. Shall the Town Council authorize the Town Administrator to sign the 2007 Tax Warrant?
- B. Shall the Town Council approve the water and sewer warrant for fall 2007 and

authorize the Town Administrator to sign said warrant?

- C. **ACTION ON RESOLUTION #2007-24** adopting the provisions of RSA 31:95-c to establish a Special Revenue Fund known as the Churchill Rink Fund to collect and expend funds for the purpose of operation, maintenance, and long-term expenses of the Churchill Rink at Jackson's Landing
- D. Shall the Town Council ratify the Collective Bargaining Agreement between the Town of Durham and the American Federation of State, County, and Municipal Employees (AFSCME) for the period January 1, 2007 through December 31, 2009?
- E. Shall the Town Council ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Professional Mid-Managers Association (DPMMA) for the period January 1, 2007 through December 31, 2009?

Councilor Stanhope and Councilor Henry Smith asked that Item be taken off.

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A, B, D, and E. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.

Regarding Item C concerning the Churchill Rink, Councilor Stanhope asked if the Town had developed an operating budget for the rink that included reserves for physical components that would require periodic capital expenditures.

Administrator Selig said the yearly expenses that had been estimated were for operating costs, not capital costs. He also spoke about the fact that the Public Works Department had determined that it needed to replace the chiller tubes for the rink. He said long term capital costs for the rink had not yet been developed.

In answer to a question from Councilor Stanhope, Councilor Leach said the Public Works Department was concentrating on getting the rink up and running, and on getting at least six months of operation under its belt, to gain more understanding of what was needed over the long term. She provided further details on this.

Administrator Selig noted that this work was an add-on to existing Public Works Department responsibilities. He also pointed out that the rink manager was a seasonal employee.

Councilor Stanhope asked if Public Works Department staff had the experience to judge what was needed for the rink, and Administrator Selig said they did, and also said they knew where to go if they needed assistance.

Councilor Morong said he had thought that revenues from the rink would be going into a capital fund to cover capital expenses, and was told that was correct.

Councilor Stanhope said he was not opposed to having a capital reserve fund, but said that beyond the funds necessary to address capital needs, funds should go to the

General Fund. He provided details on this.

Chair Niman said all the Council was doing at present was to vote on the creation of a special fund that would be run independently of the General Fund so the Town could keep better track of the funds. He said it wasn't specifically a capital reserve fund.

Administrator Selig noted that the Council would be able to decide at any time to take any surplus money out of this fund and put it into the General Fund.

Councilor Stanhope MOVED to approve RESOLUTION #2007-24 adopting the provisions of RSA 31:95-c to establish a Special Revenue Fund known as the Churchill Rink Fund to collect and expend funds for the purpose of operation, maintenance, and long-term expenses of the Churchill Rink at Jackson's Landing. Councilor Van Asselt SECONDED the motion.

Administrator Selig said the rink would be run like a business, with an annual budget. He provided details on estimated expenses and revenues for the first year of operation. He said while the projected revenues weren't absolutely guaranteed, he believed this was a reasonable estimate, and that there would likely be a limited profit of about \$22,000. He said there was \$40,000 in the General Fund to get the rink up and running, and said while this would show up as a deficit in the rink fund initially, there should eventually be a surplus. He noted that one of the unknowns was the fact that boosters of the rink were doing fundraising. He said one of the rationales for having the rink fund was to create an incentive for the boosters to support the rink.

The motion PASSED 9-0.

Councilor Needell asked if it was known when the rink would open, and Mr. Lynch said it was hoped it would be open before Thanksgiving.

VIII. Committee Appointments

- A. Shall the Town Council appoint Chris Mueller and Pete Ventura to the Economic Development Committee for three-year terms?

Chris Mueller said his reason for wanting to be on the EDC was that he wanted to become more formally involved in Town government and shaping Durham's future. He said he agreed that as things moved forward, the EDC needed to be thoughtful of other interests in Town, and needed to make sure people were working together toward a common goal.

He said he felt that economic development was not just about building things and reducing taxes; it was part of an integrated approach to creating a vibrant community.

He said a formal committee could be part of this, and said he thought the Committee would need to be thinking well into the future, and helping to lay the groundwork for that future.

Councilor Henry Smith said an integrated approach was a very good idea.

Councilor Carroll asked Mr. Mueller how he thought the Mill Plaza redevelopment fit in with the idea of an integrated approach, and she also asked if he thought the Economic Development Committee had a role to play with Mill Plaza.

Mr. Mueller said the Mill Plaza redevelopment was something the Committee should play a role in.

Councilor Needell noted that there was still one vacancy on the Economic Development Committee.

Councilor Stanhope MOVED to appoint Chris Mueller and Pete Ventura to the Economic Development Committee for three-year terms. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.

B. Shall the Town Council appoint Councilors Mark Morong and Karl Van Asselt as Council representatives to the Economic Development Committee for one-year terms?

Councilor Needell MOVED to appoint Councilors Mark Morong and Karl Van Asselt as Council representatives to the Economic Development Committee for one-year terms. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

IX. Presentation Items

A. Roselawn Farm Conservation Easement – Dea Brickner-Wood, Land Protection Working Group

Administrator Selig said Ms. Brickner-Wood had made a presentation to the Conservation Commission on this project two weeks ago. He also noted that on October 11th, the Council had spoken with Land Protection Working Group member Duane Hyde about the project in nonpublic session. He said a letter had been received from the Conservation Commission that day, endorsing the project.

There was discussion as to how much in-depth discussion the Council would have on the project at the current meeting. Ms. Brickner-Wood said the intent was to allow two meetings, with the presentation occurring at this first meeting.

Chair Niman said Councilors with questions and concerns should feel free to ask them at the present meeting, but said it wasn't expected that there would be extended discussion until the meeting when the public hearing was held.

Ms. Brickner-Wood provided the following details on the Roselawn Farm Conservation Easement project:

- The project is contingent on the final appraisal report, due diligence and funding approvals.
- The property to be included in the conservation easement contains approximately

67.2 acres, approximately 48.9 acres which is located in Durham, and approximately 18.3 acres which is located in Madbury. A 5 acre area, located in the Town of Madbury off of Perkins Road, will be excluded from the easement area to accommodate existing residences and outbuildings.

- The 67.2 acre parcel will be permanently protected by two conservation easements. The reason there are two easements covering the parcel is to satisfy USDA Farmland Protection rules requiring the USDA easements to include no more than 59% forest land. The Conservation Easement Area I will therefore include approximately 47.2 acres, including land in Durham and Madbury, and is the easement area that meets USDA requirements. The Land Protection Working Group will work with the Town of Madbury concerning Conservation Easement Area I. Conservation Easement Area 2 will include approximately 20 acres of forest land in the Town of Durham.
- Conservation Area I involves the sale of a conservation easement to Strafford River Conservancy and the USDA Natural Resource Conservation Service.
- Conservation Area 2 involves the donation of a conservation easement to the Strafford Rivers Conservancy, and an Executory Interest to the Town of Durham under which the Town will have the right to enforce the easement provisions, should the Strafford Rivers Conservancy, the easement holder, fail to do so.
- The Roselawn Farm property will remain in private ownership and the conservation easement will be held by the Strafford Rivers Conservancy to ensure the permanent protection of the agricultural and forestry resources.
- The easement also secures public attributes, including pedestrian non-motorized access in a designated portion of the property (which will be delineated on the survey plan), which includes the woodland area of the farm. There will be a designated public access point off of Perkins Road (along the western boundary of the property connecting to Beard's Creek), and an informal access from a State right of way off of Route 4
- The Strafford Rivers Conservancy will be the easement holder for both easements, and will do annual monitoring of the property. There will be money set aside in a stewardship fund for this monitoring.
- The Strafford Rivers Conservancy applied for Farm and Ranchland Protection Grant funds for the purchase of the conservation easement. Receipt of these funds is pending the obligation of matching funds from the Towns of Durham and Madbury. Each municipality is also being asked to contribute equally to the project transition costs, which are estimated to be \$18,000.
- The first Summary Appraisal for the property, conducted in April of 2007, determined that the conservation easement value of Roselawn Farm was \$931,700. Based on this, and subject to variation of the final appraisal report, the Farm and Ranchland funds would provide \$326,300 (35% of the easement purchase price), and the Towns of Durham and Madbury would each be requested to provide \$163,150, a figure representing 15% of the purchase price. The landowner would provide a bargain sale of \$279,000 (30% of the easement purchase price).
- No residential or commercial structures will be allowed on the total easement area of approximately 67.2 acres. Hoop houses (green houses) will be allowed.

Ms. Brickner-Wood next described the Roselawn Farms property in some detail, and noted among other things that it contained 48.2 acres classified as Prime agricultural

soils, Unique agricultural soils, and soils of Statewide and Local Importance. She said these soils represented over 71% of the property. She said the property included approximately 21 acres of open field and cultivated land, and about 46.2 acres of woodland. She also said the property was connected to a larger parcel of agricultural and woodland containing a farm stand on the north side of Perkins Road.

She then explained in detail that the easements satisfied all 4 criteria established by the Town of Durham's "Criteria to Evaluate Real Estate Interests for Conservation/Open Space":

- Protection of natural resources
- Build upon, create and connect large blocks and corridors of un-fragmented land
- Maintain prominent scenic vista
- Enhance public access

She then reviewed the details of the two conservation easement, stating that they were similar in structure.

Ms. Brickner-Wood said the LPWG had received some constructive comments on public access, and she noted that the wooded portion of the property would be available for pedestrian access.

Councilor Van Asselt said the public access aspect of this project was better than it was for the conservation easement projects that were approved the previous year. But he said this remained as something for the landowner to decide, and asked if the steward of the easement could be part of this decision-making.

Ms. Brickner-Wood said the landowner would retain ownership of the property with the conservation easement, but gave up certain rights. She said that given that this was a farm property, they were trying to strike a balance by honoring the historical use while also acknowledging neighbors and members of the community who had used the property.

Councilor Van Asselt asked if the proposed easement anticipated that there would actually be farmland on the property in the future.

Ms. Brickner-Wood said the intent was for agriculture to take place, and the easement created the assurance that the resources on the property were protected so that agricultural activities could take place. She provided further details on this.

Councilor Needell said there would be no violation of the agreement if the land was not farmed, but said the potential for farming would be preserved.

There was further discussion on this.

Ms. Brickner-Wood provided clarification that the role of the easement holder was to uphold the conservation easement document provisions, but that the use of the land was the decision of the landowner. She noted that the agreement allowed the owner to lease the land to someone who would practice agriculture on it.

Councilor Leach noted that at the site walk, the question was asked as to whether there could possibly be recreational uses of the property beyond trails, perhaps something like Demeritt Hill Farm.

Ms. Brickner-Wood said that something like Demeritt Hill farm could happen, but she said this would be the landowner's decision.

Councilor Van Asselt asked if one of the intents of the Land Protection Working Group was to protect land from conversion for development purposes.

Ms. Brickner-Wood said the LPWG was trying to protect important resources that the community had identified. She said the outcome of that in this situation would be no commercial development.

Councilor Van Asselt said the Council had been told the same thing in regard to the Fogg property and other conservation easement properties. He said the question was whether the intent was to make sure there wasn't housing development. He noted that the intent in regard to the Roselawn Farm property, several months back, was to put houses there, and he asked if this was why the conservation easement proposal was now before the Council. He noted that that issue didn't make him opposed to this particular conservation easement, but he said this was an important discussion to have when the Council was asked to spend money on an easement.

Ms. Brickner-Wood said there were properties the LPWG had said no to because they didn't meet certain criteria. She said this was an important agricultural property in Town.

There was further discussion about this.

Chair Niman said the discussion could be continued when the public hearing was held.

There was discussion about the portion of the property that was specifically designated for agriculture, with Ms. Brickner-Wood stating that at present, the agricultural lands were the open areas on the property. She provided details on the delineation of the wooded, public access land, and said this would be shown on the survey map that would be attached to the easement.

Councilor Morong asked if there was any flexibility so that perhaps more land on the property could be opened for public access in the future.

Ms. Brickner-Wood said the language in the easement allowed that conversation to take place.

There was further discussion on this, and that the landowner could even allow public access to 100% of the property in the future if he wanted.

Councilor Stanhope said there were a series of properties the Land Protection Working

Group had chosen not to pursue, and asked if Ms. Brickner-Wood could provide the Council with a list of these properties.

Ms. Brickner-Wood said she could do this, confidentially.

Councilor Henry Smith noted that the Conservation easement area I language on page 6 of the agreement first said “The Grantor shall post the property against motorized wheeled vehicles”, but he said language further down on the page used the word “..may prohibit motorized vehicle access..”

Mrs. Brickner-Wood said the wording throughout concerning this should be “shall”, but said she would check with the Strafford Rivers Conservancy on this. She also said that while the intent was that it was “shall” for others, the landowner had the right to use wheeled vehicles for management of the property.

Councilor Needell noted that on page 4, there was a restriction that 35% of product sales each year actually had be produced on the property, and Ms. Brickner-Wood said this was a USDA requirement.

Councilor Van Asselt MOVED to schedule a public hearing on the proposed Roselawn Farm Conservation Easement for Monday, November 19, 2007. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

The Council stood in recess from 8:38-8:47 PM.

- B. Presentation of updated Water Resources Management Plan – Michael Metcalf, Underwood Engineers, and David Cedarholm, Town Engineer

Chair Niman introduced Michael B. Metcalf, P.E., who presented a summary of the updated water management plan. Mr. Metcalf explained that the purpose of the plan was to manage the available water resources so that a reliable, year-round supply is provided to users while not over-stressing any one resource and complying with all regulations.

Mr. Metcalf displayed slides containing the information provided to the Council in his printed report.

Following Mr. Metcalf’s presentation, Councilor Needell said the issue of artificial recharge of the Spruce Hole aquifer was one he felt he needed much more education on, concerning environmental impacts and the overall functioning of the system. He asked whether Spruce Hole was a viable water supply to consider even without the recharge commitment.

Mr. Metcalf said Spruce Hole was a viable water supply even without the recharge aspect, and said the recharge idea was a bonus. He said the idea for this had come about because of the proximity to the piping for the Lamprey River, and because of low flow considerations. He provided further details on this.

Councilor Stanhope asked if there had been an independent study of water uses by the University, and there was discussion that there had not been such a study.

Councilor Morong asked about the extent of the Spruce Hole aquifer. He said a concern was that if the aquifer was recharged, the water might end up in Portsmouth.

Mr. Metcalf said the aquifer wasn't that extensive, stating that it started to thin out within thousands of feet.

There was discussion on the bowl effect caused by the soils underlying the aquifer soils.

Councilor Van Asselt noted that one of the charts in Mr. Metcalf's report showed projected UNH growth and Town growth. He said while the UNH growth data appeared to be fairly accurate, the Town data did not appear to be so accurate.

Mr. Metcalf discussed this, and said projected Town growth was admittedly a worst-case scenario.

Councilor Van Asselt said the UNH data seemed somewhat low.

Paul Chamberlin, Assistant Vice President for Energy and Campus Development, said the UNH data was consistent with the campus Master Plan, and the University's ability to fund new construction.

Councilor Needell noted that the University wouldn't actually be losing students to private housing, resulting in empty beds. He said the private housing being developed by the Town would probably be filled up by students that would otherwise be living in other towns. After further discussion with Mr. Metcalf, he said a key point was that the number of students going to the University and having to live somewhere wouldn't change, depending on how the water system developed.

Chair Niman noted that the previous water report Mr. Metcalf had done for the Town in 2000 had spoken about removing the restriction on the Lamprey River. He asked if this was something that was possible.

Mr. Metcalf said he had talked with the State, and the answer was no. He said the State said Town would have to be able to prove to NHDES that it could meet the required water quality standards, in order to be able to take as much water out of the Lamprey River as the Town wanted. In answer to a question from Chair Niman as to whether this was a battle the Town could win, he said it was a legal matter.

Councilor Julian Smith asked what was meant by water quality standards as they applied to the draw down of the Lamprey River.

Mr. Metcalf said the issue of concern to the State was water quality in relation to designated water uses of various kinds, including aquatic life. He said it was not just a

drinking water quality issue.

Chair Niman said one of the recommendations was to possibly expand the water storage capacity of the Oyster River through dredging. He asked if the University had looked into the economics of dredging and expansion of the reservoir.

Mr. Chamberlin said he believed that this had been looked at in the past, and he noted that it was a relatively small impoundment. He said the dredging would result in some increase in storage capacity, but he said it was questionable as to whether there would be an economic payback from doing this. He said something that concerned him was that the reservoir was located in the middle of College Woods, and said a question was how the area could be dredged in an environmentally sensitive way.

Chair Niman said it had been suggested that there might be cheaper ways for the Town to develop water sources other than Spruce Hole, such as putting in a well next to the Lamprey River, and using the existing piping there. He asked if that was something the Town could do, and if the State would allow this.

Mr. Metcalf said if the well was put in right next to the Lamprey, this would mean that water would essentially be pulled from the river, which would mean the 401 certificate would again be involved.

Councilor Julian Smith asked what would happen to the Spruce Hole ecosystem as the water level dropped when the water was pumped out. He asked if the \$64,000 study would address this. He also asked whether, if Lamprey River water was pumped into the Spruce Hole aquifer during periods of high flow, this would kill parts of the Spruce Hole ecosystem.

Mr. Metcalf said hydrogeologist Tom Ballestero and others had looked at this, by drilling a number of small wells in the Spruce Hole bog itself, and had found that there would be limited impacts on it. Mr. Metcalf explained that there were two different water tables involved, which were separated by impermeable sediments. He noted that the 2000 report done by Mr. Ballestero had demonstrated this. He said the bog wasn't lowered when the aquifer was pumped, and also said when water was put in, it didn't get through the impermeable layer. He said more analysis would be done of this if the Spruce Hole project went ahead.

Councilor Julian Smith asked if everything possible was done to mine the water from Spruce Hole or another well site, resulting in increased capacity and increased development, what this meant in terms of the capacity of the sewage treatment plant.

Mr. Metcalf said he couldn't really answer that question.

Administrator Selig said this issue would be a feature of a future presentation to the Council. He noted that it was anticipated that the Town would have to spend several million dollars on the wastewater treatment to meet increased demand. He said that the CIP had addressed this, and said this would happen if without the development of the Spruce Hole aquifer.

Councilor Van Asselt asked at what point Administrator Selig was going to tell the Council what he wanted it to do concerning the Spruce Hole aquifer.

Administrator Selig said he believed it was important for the Council to authorize moving ahead with additional analysis regarding Spruce Hole. He said this would provide a level of confidence on the yield, and would also give a clear sense on whether the recharge was possible and how the aquifer related to the broader water supply system. He said there would also be a better sense of what the overall cost would be.

Councilor Needell asked for a more definitive answer as to whether increasing the impoundment for the Oyster River would happen.

Mr. Metcalf said he thought this should be looked at. He said if the work had been done and it had been determined this approach was not economically viable, that was enough for him.

Mr. Chamberlin said it was looked at, and the project didn't go forward, but said he didn't know why.

Administrator Selig noted that the Town's water/wastewater committee had previously had a number of conversations on this with UNH, and UNH had determined that it wasn't really a viable option because it would be very costly, wouldn't provide a great deal of additional capacity and there were environmental impacts involved.

Councilor Needell asked if it was a correct statement that this was therefore off the list of water supply options.

Mr. Metcalf said it was on the list as an option to increase storage, but noted there were reasons why it might not be feasible.

Councilor Needell said he would either like to see a good technical reason why the option should be discarded, or it should be included in this plan.

In answer to Councilor Morong, Mr. Metcalf said the Lee well had 540,000 gallons available per day as a safe sustainable yield, day in and day out. He said 405,000 was available to be pumped, after subtracting out the amount of water allotted for the Town of Lee and Technology Drive.

Councilor Carroll said the Town had made it through another August and September, but noted they were dry months. She asked how close the Town came to drought conditions.

Mr. Cedarholm said a drought watch was declared at the end of August, and said the Town was just now preparing to lift it. He said they were close to declaring a drought warning in the middle of September, and said if the same conditions had continued for another two weeks, a drought emergency would have been declared. He noted that the

dry conditions happened at the peak of water demand.

Councilor Morong noted that there were draft recommendations concerning a drought emergency that had not yet been approved and adopted. He said if these were accepted by the Council, the Conservation Commission, and the State, they would be good to have in case of an emergency. He asked what a draft emergency actually meant.

Mr. Cedarholm said it meant there could be no car washing or watering of lawns but there would still be drinking water available. He said it would be a useful goal to adopt water demand goals, and said he personally had been hoping to get the opportunity to work on this, and see what it would take to lower water demand from 800,000 gallons to 500,000 gallons per day. He said this was what was done in the southwest, using demand goals, monitoring, strict ordinances and heavy fines, but he said Durham wasn't quite there yet.

Administrator Selig said this would allow a progressive rate structure to be developed, and there was a discussion about this with Councilor Morong. Administrator Selig said a challenge right now was that for large parts of the year, there was no water shortage, but there could be a water shortage during certain times of the year.

Councilor Henry Smith received clarification that drought restrictions wouldn't apply to those residents who weren't on the Town water system. He also asked whether there was any sense of preparation for increasing drought periods over time.

In answer to a question from Councilor Smith concerning the possibility of increasing drought periods in the future, Mr. Cedarholm said Spruce Hole would help the Town if it couldn't depend on surface water as much as one would like in the future.

Administrator Selig noted that by declaring a drought emergency, this allowed the Town to draw more water than usual from the Lamprey River reservoir. But he said the challenge was that if Durham moved into that scenario, it would need to document the steps taken to get to that point. He also said that once the drought emergency ended, the Town would need to explain to the State what it was planning to do to make sure that this didn't happen again, if it wasn't a natural emergency that had caused the drought.

Councilor Needell noted that Technology Drive used a percentage of the water from the Lee well, and said the water report indicated that in the first half of 2007, there was a very large increase in water usage there.

There was discussion on this, and Mr. Metcalf said it was something that should be looked at.

Mr. Metcalf said that regarding global warming/climate change, they were seeing an increase in intense rainfalls, although there might be the same total amount of rainfall that was occurring. He said this meant that a lot of water was going over the Wiswall dam, and said artificial recharge of Spruce Hole was a way to capture some of this water before it disappeared down the river. He noted that this concept was a topic of

conversation among scientists these days.

Councilor Carroll noted that water conservation had been the last thing in Mr. Metcalf's presentation

Mr. Metcalf said it should be the first thing on list, and said the more that water demand could be reduced, the less need there was for more water.

Administrator Selig asked what impact the in-stream flows studies of the Lamprey River would have on the current 401 certificate. He also asked Mr. Metcalf what he was seeing regarding diligence by the State to make sure that new groundwater sources didn't have adverse impacts on surrounding areas.

Mr. Metcalf said that regarding the first question on the impacts of the in-stream flow studies, it was hard to say whether the restrictions would be more or less, but said there could possibly be more restrictions. Regarding the second question, he said it would be harder and harder to get groundwater withdrawal permits in the future because there would be more restrictions. He said the State was taking a harder look at the impacts of groundwater withdrawals.

X. Unfinished Business

Shall the Town Council, upon the recommendation of the Town Administrator, award a Spruce Hole municipal well engineering and hydrogeological services contract to Underwood Engineers of Portsmouth, NH for a sum not to exceed \$64,000 and authorize the Town Administrator to sign said contract?

Councilor Van Asselt MOVED, on the recommendation of the Town Administrator, to award a Spruce Hole municipal well engineering and hydrogeological services contract to Underwood Engineers of Portsmouth, NH for a sum not to exceed \$64,000 and authorize the Town Administrator to sign said contract. Councilor Henry Smith SECONDED the motion.

Councilor Stanhope asked if the cost would be shared equally by the University and the Town, and Administrator Selig said the University would pay 2/3 of the cost, and the Town would pay 1/3. He noted that the Town's share would be covered by an urban development grant.

There was discussion that this motion had been made previously by the Council, but then was postponed indefinitely.

Councilor Van Asselt said his motion should reflect whatever procedure was appropriate.

Councilor Morong noted he had previously opposed the development of Spruce Hole, but said he could see that it might be worthwhile to do this study. He said this did not mean that he would support the project down the road, but said he would like more information, including numbers. He said the fact that there might be some development

in that part of town, and that developers might help pay for the water infrastructure were considerations. He said he didn't want the development of Spruce Hole to impact the water users unfairly, but said he felt it was worth finding out more about this potential project.

Councilor Van Asselt said this was an area where a joint effort with UNH made sense.

Councilor Needell said he had felt all along that adding an additional water supply for the Town was a good thing, and said he had no objection to development of a well at Spruce Hole. He said his concern was regarding the idea of artificial recharge of the aquifer, and said before the next step was taken, he would appreciate more information on this. He said he wanted to be convinced that those who were making the decision were making it based on sound engineering practices, and said that so far, he hadn't been convinced of this. He said from his perspective, the education piece on this hadn't been there. He said while this technique was widely practiced, it was not one that was without controversy and potential problems.

Councilor Carroll said she had enjoyed the discussion on this topic, and noted that it was the first time the Town Council had talked about water conservation. She said the Planning Board had also recently discussed the idea of water conservation, and also said the Planning Board had recently approved a large development application, where there had been no mention of water conservation.

She said she was concerned about water conservation at the Town level, stating that it was in Durham's best interest because it would save residents money and would keep more water in Town that could then be used in the future. She suggested that perhaps something could be put in the proposed Budget regarding water conservation, and said imagine if \$64,000 was turned into rain barrels. She said so much could be done with a minimal amount of money.

Councilor Carroll said this was an important topic, and said she would like to see it pursued first, before looking into another water source. She said she was also said interested in water quality, and getting the best water quality possible. She said it sounded like the water at Spruce Hole was of a very good quality, which made her very interested in it. But she said she was not interested in sending this project forward yet. She said there had been an excellent presentation, but said the report was still a draft. She said she was willing to wait a bit at this point.

The motion PASSED 7-2, with Councilor Carroll and Councilor Julian Smith voting against it.

- A. FIRST READING ON ORDINANCE #2007-12 amending Chapter 153 “Vehicles and Traffic”** of the Durham Town Code by allowing vehicles displaying a Durham Resident/Taxpayer Permit sticker to park for two hours in any location downtown listed in Section 153-52 (Schedule XX: Time limit parking) that currently allows a one hour limitation

Kathryn Lilly provided background on the development of this approach, based on her

Councilor Needell received clarification that the permit stickers had been designed and ordered, and that as long as the Council approved the Ordinance change and free access to the solid waste facility, the stickers would be issued within the next month or so.

Councilor Julian Smith MOVED to approve ORDINANCE #2007-12 amending Chapter 153 “Vehicles and Traffic” of the Durham Town Code by allowing vehicles displaying a Durham Resident/Taxpayer Permit sticker to park for two hours in any location downtown listed in Section 153-52 (Schedule XX: Time limit parking) that currently allows a one hour limitation. Councilor Needell SECONDED the motion.

Councilor Leach noted that the Council Communication on this Agenda item said there would be financial implications of this Ordinance. But she said she assumed the two hour parking would happen in areas where the Police Department currently did ticketing, so there could be some loss of revenue.

Ms. Lilly said it was assumed that residents were currently only spending an hour at these parking locations, and were not getting tickets.

Councilor Needell said the assumption was that people were law-abiding right now.

Councilor Henry Smith noted that part of the idea for allowing two hour parking was that if residents spent twice as much time downtown, they would spend more money there.

The motion PASSED unanimously 9-0.

- B. Shall the Town Council give its advice and consent to implement the amendments to the Solid Waste Management Facility Administrative Regulations proposed by the Town Administrator to allow Durham residents with Durham Resident/Taxpayer Permit stickers free access to the Solid Waste Management Facility with implementation of this change to become effective January 1, 2008?

Administrator Selig provided details on what was proposed. He noted as part of this that people wishing to use bulky waste permit system would be able to purchase them at the existing rate, with the first coupon costing \$10, the second costing \$25, and any coupons thereafter costing \$65.

Councilor Stanhope MOVED to give its advice and consent to implement the amendments to the Solid Waste Management Facility Administrative Regulations proposed by the Town Administrator to allow Durham residents with Durham Resident/Taxpayer Permit stickers free access to the Solid Waste Management Facility with implementation of this change to become effective January 1, 2008. Councilor Needell SECONDED the motion.

Councilor Needell said he was fully in support of this, and said the only question was why not increase the cost of the bulky waste coupon. He said there was real cost to the

collection of bulky wastes, and said \$10 was a tremendous bargain. He said the actual cost to the Town to dispose of the amount of wastes was about \$65. He said he would have liked to see the cost raised to \$25 for the first and second coupons.

Councilor Leach noted that the Council had discussed raising the price to \$25.

Administrator Selig said in effort to try to be thorough from an organizational perspective, he had had a meeting on how this would be implemented. He said Public Works Department staff had concerns that if the cost were raised to \$25, there would be an outcry from some people, including rental property owners. He provided details on this, and said the numbers that had been provided would allow a transition over time.

There was discussion about the fact that the revenue projections were based on the \$25 figure, and that the \$10 figure brought the revenue projections down somewhat. Administrator Selig provided details on the tradeoffs, and said there would be a net loss of about \$5,000 as a result of implementing this.

Councilor Stanhope said he believe that affordable bulky waste disposal had decreased the amount of the annual pickup, so there had been an economic savings there. He also said the Integrated Waste Management Advisory Committee supported this proposal, and encouraged the Council to pass this as proposed.

There was discussion that the issue for the IWMAC committee was free access, with Administrator Selig explaining that the idea of fees for the bulky waste coupons wasn't brought back to the Committee because this hadn't been a focus of their efforts. He also said the Town didn't want to create controversy with this proposal, and felt this pricing point would work.

Councilor Morong said the public was behind the idea of free access to the facility. He also said that although a coupon allowed a ton of material to be brought in, a typical pickup truck could hold about a half a ton of material.

The motion PASSED unanimously 9-0.

C. Discussion relative to acquisition of potential site for a combined Town Hall and Library

Councilor Peter Stanhope left the meeting at this time.

Councilor Julian Smith said the idea for this discussion had grown out of very extensive discussions that the Mill Plaza Study Committee had had about how much area should be included in the proposed redevelopment of the Plaza.

He said rather than saying to Mr. Pinto that the Town wanted to buy some of his land, which would cost quite bit of money, there was interest in a large vacant piece of land immediately to the east of end of the parking lot, beyond the Chinese restaurant and the credit union. He said the property was undeveloped and was presently land locked. He

said about three years ago, a member of the Library Board of Trustees was asked to approach the owner about using the site as a location for the new Library. He said the owner was not especially interested in this, and he provided details on this.

Councilor Smith said he would like to see whether the Town Council had any interest in continuing to pursue this idea, with the idea that this property would be a good potential location for a combined Town Hall/Library if the Town could get the easement and create a road across the Plaza to get to it. He said that perhaps in connection with the designs that the three teams of architects had done again and would do again, they could bring the road down from Main Street, either in the location of the Grange or several buildings east of the Grange. He noted that Chair Niman had spoken of the idea of marketing the current Town Hall property, which was very valuable in terms of producing tax income.

There was discussion about the fact that the property was currently landlocked. Councilor Smith said that if the developer bought it, access would have to be obtained either from Mr. Kreyages from Main or from Mr. Pinto.

Councilor Julian Smith suggested that the Town could say to Mr. Pinto that it would like to put a lot more traffic, on a regular basis, past the shops in a redeveloped Mill Plaza, with people coming to the Library and the Town Hall. He said this made sense in a number of ways, and said there was a good deal of interest in having a Town Hall located in a more convenient location, and having a larger library than the Town now had.

Chair Niman said people should realize that the only way this property was going to be available was by taking it through eminent domain. He said the question for the Council was how committed it was to putting the Library on this property, and how willing it was to pursue the idea of eminent domain. He also said he was fairly confident that the owner of the Plaza would provide the easement needed to the property.

He noted that the Town owned the Grange, which was strategically related to the redevelopment of the Plaza. But he said this whole subject was not worth discussing unless the Council was willing to take the property by eminent domain. He said Mr. Kreyages had been approached several times about the idea of purchasing his property, the most recent time being the previous week, but had said he was not interested. He said the Town had the legal authority to do this for municipal purposes, which would involve purchasing the property at its fair market value. There was discussion about the process that would be involved. Chair Niman said although the Town did have the legal power to do this, this was not to say that it therefore should do this.

Councilor Morong asked why Councilor Stanhope was not sitting at the table for this discussion, and Councilor Stanhope said he had a conflict.

Councilor Needell said eminent domain was an important tool for a municipality to have for municipal purposes, and said he was not philosophically opposed to it. But he said if the Mill Plaza development was not going to occur, he would have no particular

interest in siting the library there. He said he didn't know whether the Library Trustees would still want the site in that circumstance, and said an important question was whether the Trustees wanted the Town to provide this land, regardless of the Mill Plaza development. He also said the property would have to be a last resort for siting the library, or to make a library work within the Mill Plaza plan. He said he hadn't heard that this was the case, that this property was absolutely critical to the needs of the community. He said he didn't feel the Town was even close to the threshold of exercising eminent domain.

Chair Niman noted that the Council had adopted a motion that the meeting would end at 10:30 pm, so another motion would be needed to extend the meeting.

Councilor Henry Smith MOVED to extend the meeting beyond 10:30 pm. Councilor Julian Smith SECONDED the motion, and it FAILED 5-4, with Councilor Stanhope, Councilor Van Asselt, Councilor Leach and Councilor Morong voting against it. (a 2/3 majority was needed to approve the motion)

Chair Niman said the meeting the following week would be the public hearing on the proposed 2008 Budget.

Administrator Selig noted that the entire proposed 2008 Budget was on the Town Web site and he encouraged residents to read through it.

- D. Overview and initial discussion on the Administrator's proposed FY 2008 Operating Budgets, Capital Budget, and 2008-2017 Capital Improvement Plan

This item was not discussed

- E. Other business

XI. New Business

XIV. Adjourn

There was no motion to adjourn required. The meeting ended at 10:35 pm.

Victoria Parmele, Minute taker